

**U.S. District Court
Northern District of Ohio (Akron)
CIVIL DOCKET FOR CASE #: 5:05-cv-01396-DDD**

Akron Beacon Journal Publishing Company, Inc. v. United
States Department of Justice
Assigned to: Judge David D. Dowd, Jr
Case in other court: 6th Circuit, 06-03164
Cause: 05:552 Right to Privacy Act

Date Filed: 05/18/2005
Date Terminated: 11/16/2005
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

**Akron Beacon Journal Publishing
Company, Inc.**

represented by **Edward G. Kemp**
Akron Beacon Journal
44 East Exchange Street
P.O. Box 640
Akron, OH 44309-0640
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V.

Defendant

Alberto Gonzales, Attorney General
United States Department of Justice

represented by **Lisa Hammond Johnson**
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Defendant

United States Marshals Service
Peter J. Elliott, U.S. Marshal for the
Northern District of Ohio

represented by **Lisa Hammond Johnson**
 (See above for address)
ATTORNEY TO BE NOTICED

Marcia W. Johnson
 (See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
05/18/2005	<u>1</u>	Complaint against United States Department of Justice (2 summons and Magistrate Consent Form issued). Filed by Akron Beacon Journal Publishing Company, Inc. Filing fee paid; receipt number 516801. (Attachments: # <u>1</u> Exhibit A: Correspondence# <u>2</u> Exhibit B: Docket# <u>3</u> Exhibit C: Articles# <u>4</u> Exhibit D: Freedom of Information Act# <u>5</u> Exhibit E: Correspondence# <u>6</u> Civil Cover Sheet)(S, T) (Entered: 05/19/2005)
05/18/2005	<u>2</u>	Random Assignment of Magistrate Judge James S. Gallas. (S, T) (Entered: 05/19/2005)
05/18/2005	<u>3</u>	Corporate Disclosure Statement filed by plaintiff Akron Beacon Journal Publishing Company, Inc. (S, T) (Entered: 05/19/2005)
05/24/2005	<u>4</u>	Amended complaint against United States Marshals Service, United States Department of Justice. Filed by Akron Beacon Journal Publishing Company, Inc.. (P, G) (Entered: 05/25/2005)
05/24/2005	<u>6</u>	Motion for permanent injunction, Motion for emergency temporary restraining order filed by Akron Beacon Journal Publishing Company, Inc.. (Attachments: # <u>1</u> Exhibit A–Transcript of proceedings, complete 22 page document on file in the Clerk's Office# <u>2</u> Exhibit B–Plea agreement# <u>3</u> Exhibit C# <u>4</u> Exhibit D–Akron Beacon Journal articles)(P, G) (Entered: 05/25/2005)
05/25/2005	<u>5</u>	Order scheduling Hearing on Plaintiff's Motion for Temporary Restraining Order for 5/25/2005 at 1:30 p.m. in Courtroom 442 before Hon. David D. Dowd Jr. Signed by Judge David D. Dowd Jr. on 5/25/05. (M, D) (Entered: 05/25/2005)
05/25/2005	<u>7</u>	Order advising counsel regarding criminal defendants in case #5:05CR62 that if they wish to intervene in this matter that they should do so forthwith as the Court has a hearing on a motion for temporary restraining order set for 5/25/05 at 1:30 p.m. in this matter. Copy of this order faxed to Gretchen Holderman, Richard Lille and Larry Whitney on 5/23/05 and advised by phone. Signed by Judge David D. Dowd Jr. on 5/25/05. (M, D) (Entered: 05/25/2005)
05/25/2005		Minutes of proceedings (non–document). Motion Hearing held on 5/25/05 re <u>6</u> Motion for permanent injunction/Motion for temporary restraining before Judge David D. Dowd Jr. Time: 2.0 hours (Court Reporter Lori Callahan) (M, D) (Entered: 05/25/2005)
05/25/2005	<u>8</u>	Exhibit Index for Plaintiff, Defendant and Court of Exhibits admitted at Motion Hearing conducted on 5/25/05. Court's Exhibits placed under seal and Plaintiff's and Defendant's Exhibits w/courtroom deputy. (M, D) (Entered: 05/26/2005)
05/26/2005	<u>9</u>	Order directing Plaintiff to file its brief in support of the Motions by 6/10/05; Defendants to file response by 6/17/05; and Plaintiff to file reply by 6/24/05. Signed by Judge David D. Dowd Jr. on 5/26/05. (M, D) (Entered: 05/26/2005)
05/26/2005	<u>10</u>	Order directing defendant U.S. Marshal Elliot or his deputy David Harlow provide to the Court by 6/3/05, under seal, a sample of booking photographs that represents the various attire of criminal defendants in their booking photographs. Defendants' counsel to provide a copy of this order to U.S. Marshal Elliot or his deputy. Signed by Judge David D. Dowd Jr. on 5/26/05. (M, D) (Entered: 05/26/2005)
06/01/2005	<u>11</u>	Motion for extension of time to file brief until June 20, 2005, filed by Akron Beacon Journal Publishing Company, Inc. (Lefton, Karen) Modified on 6/3/2005

		(N, D). (Entered: 06/01/2005)
06/02/2005	<u>12</u>	Motion for extension of time until June 10, 2005, to Provide Sample Booking Photographs Under Seal to the Court filed by United States Marshals Service, Alberto Gonzales, Attorney General. Related document(s) <u>10</u> . (Johnson, Lisa) (Entered: 06/02/2005)
06/02/2005		Order (non-document) granting <u>11</u> Plaintiff's Motion for extension of 10 days to 6/20/2005 to file its brief in support of its motion. Entered on behalf of Judge David D. Dowd Jr. on 6/2/05.(M, D) (Entered: 06/02/2005)
06/02/2005		Order (non-document) granting <u>12</u> Defendant's Motion for Extension of Time until 6/10/05 to provide sample photographs. Entered on behalf of Judge David D. Dowd Jr. on 6/2/05.(M, D) (Entered: 06/02/2005)
06/10/2005	<u>13</u>	Notice <i>Of Compliance With Court Order</i> filed by United States Marshals Service, Alberto Gonzales, Attorney General. Related document(s) <u>10</u> . (Johnson, Lisa) (Entered: 06/10/2005)
06/10/2005	<u>14</u>	Booking Photographs (13) filed under seal by United States Marshals Service. (SEALED #3663) Related document(s) <u>10</u> . (P, S) (Entered: 06/10/2005)
06/13/2005	<u>15</u>	Transcript (non-document) of Temporary restraining order Proceedings held on 5/25/05 before Judge David D. Dowd, Jr. filed manually. To obtain a bound copy of this transcript please contact Court Reporter Lori Ann Callahan at 330-819-8676. Complete document on file, 71 pages. (P, G) (Entered: 06/13/2005)
06/16/2005	<u>16</u>	Motion to dismiss case filed by United States Marshals Service, Alberto Gonzales, Attorney General. (Johnson, Lisa) (Entered: 06/16/2005)
06/24/2005	<u>17</u>	Response to Motion to dismiss case <i>and Motion for Attorneys' fees</i> filed by Akron Beacon Journal Publishing Company, Inc.. Related document(s) <u>16</u> . (Attachments: # <u>1</u> Exhibit Receipts for proof of service)(Lefton, Karen) (Entered: 06/24/2005)
06/28/2005	<u>18</u>	Reply to response to Motion to dismiss case <i>And Motion For Attorneys' Fees</i> filed by United States Marshals Service, Alberto Gonzales, Attorney General. Related document(s) <u>16</u> . (Johnson, Lisa) (Entered: 06/28/2005)
06/29/2005	<u>19</u>	Praecipe for alias summons filed by Akron Beacon Journal Publishing Company, Inc. Related document(s) <u>1</u> . (W, He) (Entered: 06/30/2005)
06/30/2005		Alias Summons issued to counsel for Beacon Journal Publishing Co., Inc. for service upon United States Attorney on 6/29/2005. (W, He) (Entered: 06/30/2005)
07/08/2005	<u>20</u>	Order that in the absence of perfection of service within 120 days of the filing of the Complaint, i.e. Thursday, September 15, 2005, the Court will dismiss this action without prejudice at Plaintiff's costs. Signed by Judge David D. Dowd Jr. on 7/7/05. (M, D) (Entered: 07/08/2005)
07/21/2005	<u>21</u>	Notice of Service <i>of U.S. Attorney for Northern District</i> filed by Akron Beacon Journal Publishing Company, Inc.. (Attachments: # <u>1</u>) (Lefton, Karen) (Entered: 07/21/2005)
07/27/2005	<u>22</u>	Order that objections in re to valid service be filed by 4:00 p.m. on 7/29/05. Status Conference set for 8/4/2005 at 10:00 a.m. in Courtroom 442 before Hon. David D. Dowd Jr. Signed by Judge David D. Dowd Jr. on 7/26/05. (M, D) (Entered: 07/27/2005)
07/28/2005	<u>23</u>	Notice <i>Of Perfection Of Service</i> filed by United States Marshals Service, Alberto Gonzales, Attorney General. (Johnson, Lisa) (Entered: 07/28/2005)
07/28/2005	<u>24</u>	Motion to continue <i>Status Conference</i> filed by Akron Beacon Journal Publishing Company, Inc.. (Lefton, Karen) (Entered: 07/28/2005)
08/02/2005		Order (non-document) granting Motion to continue (Related Doc # <u>24</u>). Status Conference reset for 8/15/2005 at 12:00 noon in Chambers 402 before Hon. David D. Dowd Jr. Entered on behalf of Judge David D. Dowd Jr. on 8/1/05.(M, D) (Entered: 08/02/2005)

08/11/2005	<u>25</u>	Motion for <i>Order Dismissing Case For Mootness</i> filed by United States Marshals Service, Alberto Gonzales, Attorney General. (Johnson, Lisa) (Entered: 08/11/2005)
08/15/2005		Minutes (non-document) of proceedings. Status Conference held on 8/15/05 before Judge David D. Dowd Jr. Time: 60 Minutes. (Court Reporter none) (M, D) (Entered: 08/15/2005)
08/16/2005	<u>26</u>	Order directing plaintiff to respond to defendants' motion to dismiss for mootness <u>25</u> by 8/29/05. Signed by Judge David D. Dowd Jr. on 8/16/05. (M, D) Modified text on 8/17/2005 (S, DJ). (Entered: 08/16/2005)
08/29/2005	<u>27</u>	Response to Motion for <i>Order Dismissing Case For Mootness</i> filed by Akron Beacon Journal Publishing Company, Inc.. Related document(s) <u>25</u> . (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C# <u>4</u> Exhibit D)(Lefton, Karen) (Entered: 08/29/2005)
08/30/2005	<u>28</u>	Order denying Defendants' Motions to dismiss case (Related Doc # <u>16</u> , # <u>25</u>). Additionally, Defendants shall notify the Court by Friday, September 2, 2005, at 10:00 a.m. whether they agree or disagree with the Court's conclusion that they have admitted that their refusal to produce the booking photographs in this case constituted a violation of F.O.I.A. If they agree, Plaintiff shall file its petition for attorney fees and costs by Friday, September 16, 2005, and Defendants shall file their objections to the fee petition by Friday, September 30, 2005. Signed by Judge David D. Dowd Jr. on 8/30/05.(Z, M) (Entered: 08/30/2005)
09/01/2005	<u>29</u>	Motion for extension of time until September 9, 2005, to respond to the Court's August 30, 2005, Order filed by United States Marshals Service, Alberto Gonzales, Attorney General. Related document(s) <u>28</u> . (Johnson, Lisa) (Entered: 09/01/2005)
09/02/2005		Order (non-document) granting <u>29</u> Defendants' Motion for Extension of Time. Defendants shall file their response to the Court's Order (Doc. No. <u>28</u>) by Friday, September 9, 2005. Entered on behalf of Judge David D. Dowd Jr. on 9/2/05.(Z, M) Modified text of docket entry on 9/7/2005 (B, B). (Entered: 09/02/2005)
09/09/2005	<u>30</u>	Response <i>To Court's Order And Motion For Reconsideration</i> filed by United States Marshals Service, Alberto Gonzales, Attorney General. (Attachments: # <u>1</u> Bordley Decl.# <u>2</u> Exhibit A to Decl. – USMS Directive 1.12(A)(3)(g)(5)# <u>3</u> Exhibit B to Decl. – USMS Directive 1.12(B)# <u>4</u> Exhibit C to Decl. – USMS Memorandum dated 8/19/04# <u>5</u> Exhibit D to Decl. – USMS Memorandum dated 8/10/05# <u>6</u> Exhibit E to Decl. – FOIA Request rec'd 8/18/05# <u>7</u> Exhibit F to Decl. – USMS Letter dated 8/23/05# <u>8</u> Exhibit 1 – Lisa Hammond Johnson Letter dated 8/11/05) (Johnson, Lisa) (Entered: 09/09/2005)
09/16/2005	<u>31</u>	Motion for attorney fees and <i>Reply to Defendants' Response to Order</i> by Karen C. Lefton filed by on behalf of Akron Beacon Journal Publishing Company, Inc.. (Attachments: # <u>1</u> Appendix A – KL's timesheet# <u>2</u> Appendix B – Kopp Affidavit) (Related doc <u>28</u> , <u>30</u>) (Lefton, Karen) Modified to create links on 12/7/2005 (B, B). (Entered: 09/16/2005)
09/19/2005	<u>32</u>	Order denying <u>30</u> defendants' renewed motion to dismiss and for reconsideration and grants plaintiff leave until 9/30/05 to submit its petition for attorneys fees. Defendants are granted leave until 10/14/05 to submit their response to Plaintiff's petition. Plaintiff has leave until 10/21/05 to submit its reply. Unless Plaintiff files a motion for summary judgment on claims by 9/30/05, the Court will consider them abandoned and they will be dismissed. If Plaintiff does seek Summary Judgment as to Counts II and III of the Amended Complaint, Defendants are granted leave until 10/14/05 to file their response and/or Cross Motions for Summary Judgment. In that event, Plaintiffs would be granted leave until 10/21/05 to file a reply. Signed by Judge David D. Dowd Jr. on 9/16/05. (M, D) (Entered: 09/19/2005)
09/22/2005	<u>33</u>	Order granting plaintiff leave to 9/30/05 to supplement its petition <u>31</u> . Signed by Judge David D. Dowd Jr. on 9/22/05. (M, D) (Entered: 09/22/2005)
09/23/2005	<u>34</u>	Answer to Amended Complaint (Related Doc # <u>4</u>) filed by United States Marshals Service, Alberto Gonzales, Attorney General. (Johnson, Lisa) (Entered: 09/23/2005)

09/30/2005	<u>35</u>	Motion for summary judgment filed by Akron Beacon Journal Publishing Company, Inc.. (Attachments: # <u>1</u> Exhibit A– August 19, 2004, directive# <u>2</u> Exhibit B – August 10, 2005, directive# <u>3</u> Exhibit D – Khabner – Tisdale photos# <u>4</u> Exhibit E – McKnight letter# <u>5</u> Exhibit F– Elliott response# <u>6</u> Exhibit C – Geig–Watson photos)(Lefton, Karen) (Entered: 09/30/2005)
09/30/2005	<u>36</u>	Motion for extension of time to file supplemental brief on the attorneys' fees issue filed by Akron Beacon Journal Publishing Company, Inc.. Related document(s) <u>33</u> . (Lefton, Karen) Modified text on 10/7/2005 (E, P). (Entered: 09/30/2005)
10/07/2005	<u>37</u>	Order that Defendants are granted leave to respond to Plaintiff's Motion for Summary Judgment and to respond to Plaintiff's petition for attorney's fees until October 21, 2005. Plaintiff has sought additional time to supplement her petition for attorney's fees (Doc. No. <u>36</u>). Plaintiff's motion is granted. Plaintiff is granted leave until October 28, 2005 to file a reply brief in support of the motion for summary judgment and to supplement her petition for attorney's fees. Count Two and Count Three of the Amended Complaint are dismissed. Signed by Judge David D. Dowd Jr. on 10/6/05.(M, D) (Entered: 10/07/2005)
10/14/2005	<u>38</u>	Motion for leave to file <i>Amended Complaint</i> filed by Akron Beacon Journal Publishing Company, Inc.. (Attachments: # <u>1</u> Second Amended Complaint)(Lefton, Karen) (Entered: 10/14/2005)
10/17/2005	<u>39</u>	Order denying Plaintiff's Motion for leave to file a Second Amended Complaint (Related Doc # <u>38</u>). Signed by Judge David D. Dowd Jr. on 10/17/05.(M, D) (Entered: 10/17/2005)
10/21/2005	<u>40</u>	Opposition to Motion for summary judgment filed by United States Marshals Service, Alberto Gonzales, Attorney General. Related document(s) <u>35</u> . (Johnson, Lisa) (Entered: 10/21/2005)
10/21/2005	<u>41</u>	Opposition to Motion for attorney fees <i>and Reply to Defendants' Response to Order</i> by Karen C. Lefton (<i>filing only a Memorandum in Opposition to Plaintiff's Petition for Attorneys' Fees</i>) filed by United States Marshals Service, Alberto Gonzales, Attorney General. Related document(s) <u>31</u> . (Attachments: # <u>1</u> W & T Offshore, Inc. v. US Dep't of Commerce)(Johnson, Lisa) (Entered: 10/21/2005)
10/26/2005	<u>42</u>	Reply to response to Motion for summary judgment filed by Akron Beacon Journal Publishing Company, Inc.. Related document(s) <u>35</u> . (Lefton, Karen) (Entered: 10/26/2005)
10/26/2005	<u>43</u>	Reply to response to Motion for attorney fees <i>and Reply to Defendants' Response to Order</i> by Karen C. Lefton filed by Akron Beacon Journal Publishing Company, Inc.. Related document(s) <u>31</u> . (Lefton, Karen) (Entered: 10/26/2005)
11/16/2005	<u>44</u>	Memorandum Opinion and Order granting Plaintiff's motion for summary judgment (Doc. No. <u>35</u>). Plaintiff's petition for attorney's fees (Doc. No. <u>31</u>) is granted and the Court awards Plaintiff the amount of \$6,892.00 in fees and costs to be paid by Defendant. Signed by Judge David D. Dowd Jr. on 11/16/05. (M, D) (Entered: 11/16/2005)
11/16/2005	<u>45</u>	Judgment Entry that for the reasons set forth in the Memorandum Opinion the Plaintiff's motion for summary judgment (Doc. No. <u>35</u>) is granted. Plaintiff's petition for attorney's fees (Doc. No. <u>31</u>) is granted and the Court awards Plaintiff the amount of \$6,892.00 in fees and costs to be paid by Defendant. Case closed. Signed by Judge David D. Dowd Jr. on 11/16/05. (M, D) (Entered: 11/16/2005)
01/13/2006	<u>46</u>	NOTICE OF APPEAL to the 6th Circuit Court of Appeals from the <u>45</u> Judgment and <u>44</u> Memorandum Opinion and Order of 11/16/05, filed by defendants United States Marshals Service and Alberto Gonzales, Attorney General (Johnson, Lisa). Modified text on 1/17/2006 (H, S P). (Entered: 01/13/2006)
03/10/2006	<u>47</u>	Acknowledgment from the USCA for Sixth Circuit of receipt of <u>46</u> Notice of Appeal (USCA# 06–3164). Date filed in USCA 2/7/06. (H, S P) (Entered: 03/10/2006)
05/05/2006	<u>48</u>	True copy of order from the USCA for the Sixth Circuit dismissing appeal upon motion for voluntary dismissal (USCA #06–3164). (related doc <u>46</u>). Date issued

		5/3/06. (C, K A) (Entered: 05/05/2006)
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